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ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS COMMERCE COMMISSION
ILLINOIS COMMERCE COMMISSION

2004 NOV 24 A 11: 22

Illinois Bell Telephone Company)

vs.)

1-800 Reconex, Inc., et al.,)

Complaint pursuant to Section 10-108)
of the Illinois Public Utilities Act)
220 ILCS 5/10-108 and 83 Illinois)
Administrative Code 200.170)

CHIEF CLERK'S OFFICE

Docket 04-0606

**VERIFIED ANSWER AND AFFIRMATIVE
DEFENSES OF SNG COMMUNICATIONS, L.L.C.**

In response to the prefatory allegations included in the Amended Complaint, Respondent SNG Communications, L.L.C. ("SNG") states that because the parties have not recently engaged in any negotiations, it currently has no identified disputes with Illinois Bell Telephone Company d/b/a/ SBC Illinois ("SBC") "pursuant to [its] Interconnection Agreement[]" with SBC ("SNG/SBC ICA"). Therefore, SBC's request that the Illinois Commerce Commission ("Commission") resolve alleged ICA-related disputes between SNG and SBC is without any legal foundation and is wholly improper.

SNG further states that it is unaware of any "direct suggestion" by the FCC that would explain or account for, let alone excuse or justify, SBC's premature filing of its Amended Complaint. Specifically, the FCC's "*Interim Order*", which this Commission refers to as the *Status Quo Order*, in pertinent part states, "we expressly preserve incumbent LECs' contractual prerogatives to initiate change of law proceedings **to the extent consistent with their governing interconnection agreements.**" See Order and Notice of Proposed Rulemaking, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-

179 (FCC rel. Aug. 20, 2004) (“*Status Quo Order*”) at ¶ 22. (emphasis added). Thus, to the extent that SBC seeks to amend the SNG/SBC ICA, SBC must comply with the relevant provisions of the ICA. SBC admittedly failed to do so, as evidenced by the lack of any allegations in the Amended Complaint regarding the change of law and/or dispute resolution provisions included in the SNG/SBC ICA.

SNG answers the allegations set forth in the numbered paragraphs of the Amended Complaint as follows:

1. SNG denies the allegations of Paragraph 1 of the Amended Complaint for lack of knowledge sufficient to form a belief as to their truth or falsity.
2. Answering solely for itself, SNG admits that it is a telephone company and a competitive local exchange carrier (“CLEC”). SNG further admits that it is a party to a currently effective interconnection agreement with SBC (“SNG/SBC ICA”), which was entered into and approved by the Commission under Section 252 of the federal Telecommunications Act of 1996. SNG further admits that its name and address is contained in Exhibit A to the Amended Complaint and also is included in the SNG/SBC ICA. SNG denies that it is a “requesting telecommunications carrier” because it is not clear what SBC means by this phrase. SNG further denies the remaining allegations of Paragraph 2 of the Amended Complaint for lack of knowledge sufficient to form a belief as to their truth or falsity. SNG makes no response to the allegation directed to respondents other than SNG.
3. The allegations of Paragraph 3 of the Amended Complaint do not concern SNG, and no responsive pleading is required.

4. The majority of the allegations of Paragraph 4 of the Amended Complaint constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 4 do not concern SNG, and no responsive pleading is required.

5. SBC's allegations regarding the alleged "directions" of the FCC constitute legal conclusions to which no responsive pleading is required. SNG denies the remaining allegations of Paragraph 5 of the Amended Complaint for lack of knowledge sufficient to form a belief as to their truth or falsity.

6. The requests for relief that are included in SBC's Amended Complaint speak for themselves, and allegations characterizing those requests require no responsive pleading. SNG denies that SBC's requested relief is necessary to make the SNG/SBC ICA consistent with the FCC's *Triennial Review Order* or the FCC's *Status Quo Order*, or "in anticipation of the FCC's post *USTA II* unbundling rules". SNG admits that the FCC has indicated that it may issue final unbundling rules as early as December 2004.

7. SNG denies SBC's conclusory and untenable characterizations regarding its requested relief. SNG further states that the allegations of Paragraph 7 of the Amended Complaint constitute legal conclusions to which no responsive pleading is required.

8. SNG denies SBC's general allegations about "existing interconnection agreements in this state" and denies that it "ha[s] not conformed [its] interconnection agreement to governing law. Further, SNG states that the remaining allegations of Paragraph 8 of the Amended Complaint constitute legal conclusions to which no responsive pleading is required.

9. SNG denies the allegations of Paragraph 9 of the Amended Complaint for lack of knowledge sufficient to form a belief as to their truth or falsity.

10. SNG denies the allegations of Paragraph 10 of the Amended Complaint for lack of knowledge sufficient to form a belief as to their truth or falsity.

11. SNG denies the allegations of Paragraph 11 of the Amended Complaint for lack of knowledge sufficient to form a belief as to their truth or falsity.

12. SNG admit that federal unbundling requirements promulgated by the FCC have changed and that CLECs, ILECs and state commissions have devoted an enormous amount of resources to implementing interconnection agreements that satisfy the requirements of the Telecommunications Act of 1996. SNG denies the remaining allegations of Paragraph 12 of the Amended Complaint for lack of knowledge sufficient to form a belief as to their truth or falsity.

13. SNG states that the allegations of Paragraph 13 of the Amended Complaint constitute legal conclusions to which no responsive pleading is required.

14. SNG denies the factual characterizations included in Paragraph 14 of the Amended Complaint. SNG states that the remaining allegations of Paragraph 14 constitute legal conclusions to which no responsive pleading is required. Further, SNG denies SBC's characterizations of the authorities referenced in Paragraph 14 and states that those authorities speak for themselves.

15. SNG denies the factual characterizations included in Paragraph 15 of the Amended Complaint. SNG denies SBC's general allegations about actions it allegedly took in response to *USTA I* and in response to alleged actions of the FCC for lack of knowledge

sufficient to form a belief as to their truth or falsity. SNG also denies SBC's general allegations about actions allegedly taken by the FCC for lack of knowledge sufficient to form a belief as to their truth or falsity. To the extent the allegation of Paragraph 15 constitute legal conclusions, no responsive pleading is required. Further, SNG denies SBC's characterizations of the authorities referenced in Paragraph 15 and further states that those authorities speak for themselves.

16. SNG admits that the FCC issued its *Triennial Review Order* on August 21, 2003 and that it took effect October 2, 2003. SNG denies SBC's characterizations of the *Triennial Review Order* and states that t the *Triennial Review Order* speaks for itself.

17. SNG states that the allegations of Paragraph 17 of the Amended Complaint constitute legal conclusions to which no responsive pleading is required. Further, SNG denies SBC's characterizations of the authorities referenced in Paragraph 17, and states that the authorities referenced in Paragraph 17 speaks for themselves.

18. SNG admits that the FCC has indicated that it may issue final unbundling rules as early as December 2004. SNG states that the remaining allegations of Paragraph 18 of the Amended Complaint constitute legal conclusions to which no responsive pleading is required. SNG further states that the authority referenced in Paragraph 18 speaks for itself.

19. SNG admits that the FCC's *Status Quo Order* and accompanying NPRM were released on August 20, 2004 and published in the Federal Register on September 13, 2004. SNG denies SBC's characterizations of the *Status Quo Order*. Further, SNG states that the *Status Quo Order* speaks for itself and SBC has grossly mischaracterized its provisions. The remaining allegations of Paragraph 19 of the Amended Complaint constitute legal conclusions to which no responsive pleading is required.

20. SNG denies that the Commission either can or should act in accordance with SBC's untenable recommendations. SNG states that the remaining allegations of Paragraph 20 of the Amended Complaint constitute legal conclusions to which no responsive pleading is required.

21. SNG denies SBC's characterizations of the *Status Quo Order*. Further, SNG states that the *Status Quo Order* speaks for itself and that SBC has grossly mischaracterized its provisions.

22. SNG states that the allegations of Paragraph 22 of the Amended Complaint constitute legal conclusions to which no responsive pleading is required. Further, SNG denies SBC's characterizations of the *Status Quo Order* and states that the *Status Quo Order* speaks for itself.

23. SNG admits that in recent years, federal unbundling law has seen rapid changes. SNG denies that the SNG/SBC ICA does not comply with federal law. Also, SNG denies SBC's general allegations regarding SBC's alleged actions for lack of knowledge sufficient to form a belief as to their truth or falsity.

24. SNG denies SBC's general allegations regarding its alleged actions following the October 2003 effective date of the *Triennial Review Order* for lack of knowledge sufficient to form a belief as to their truth or falsity. SNG admits that in January 2004, SBC contacted SNG about revising the SNG/SBC ICA. However, despite SNG's attempts to schedule a date to engage in negotiations regarding the ICA, SBC never responded to SNG and never scheduled a date for negotiations with SNG.

25. SNG denies SBC's general allegations regarding its alleged actions following the issuance of the mandate in *USTA II* for lack of knowledge sufficient to form a belief as to their truth or falsity. SNG admits that following the June 16, 2004 issuance of the mandate in *USTA II*, SNG received a letter from SBC requesting discussions regarding possible changes to the SNG/SBC ICA, however, there were no subsequent communications between SBC and SNG and no discussions ever occurred.

26. SNG denies SBC's general allegations regarding its agreements with certain CLECs and its allegations that those CLECs are "the exception" for lack of knowledge sufficient to form a belief as to their truth or falsity. SNG states that the remaining allegations of Paragraph 26 of the Amended Complaint constitute legal conclusions to which no responsive pleading is required.

27. SNG denies SBC's general allegation that the Commission's assistance currently is necessary to conform SBC's various ICAs to governing federal law, or for any other reason for lack of knowledge sufficient to form a belief as to their truth or falsity. SNG also the implicit allegation that the referenced ICAs are not in conformance with federal law. SNG denies SBC's erroneous characterizations of the referenced FCC orders. SNG denies SBC's allegations regarding its reasons for filing the Amended Complaint for lack of knowledge sufficient to form a belief as to their truth or falsity. To the extent that the remaining allegations of Paragraph 27 constitute legal conclusions, no responsive pleading is required. SNG further states that the *Status Quo Order* speaks for itself.

28. SNG denies SBC's characterization of the content and alleged effect of its proposal. Further, SNG denies SBC's characterizations of the referenced FCC orders and states that those order speaks for themselves.

29. The allegations included in the first sentence of Paragraph 29 of the Amended Complaint constitute a prayer for relief, and no responsive pleading is required. SNG denies SBC's erroneous characterization of the effect its requested relief would have. To the extent that the allegations of Paragraph 29 constitute legal conclusions, no responsive pleading is required.

30. The allegations of Paragraph 30 of the Amended Complaint constitute SBC's prayer for relief, and no responsive pleading is required. However, SNG affirmatively states that the Commission should deny SBC its requested relief.

AFFIRMATIVE DEFENSES

First Affirmative Defense

SBC failed to state a claim upon which relief can be granted.

Second Affirmative Defense

SBC has not alleged a proper basis for subject matter jurisdiction.

Third Affirmative Defense

SBC failed to allege that it satisfied the SNG/SBC ICA's necessary prerequisites for bringing a complaint against SNG.

Fourth Affirmative Defense

SBC violated the provisions of the SNG/SBC ICA.

Fifth Affirmative Defense

SBC failed to comply with Sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252.

Sixth Affirmative Defense

SBC's requested relief is contrary to public policy.

Respectfully submitted,

SNG COMMUNICATIONS, L.L.C.

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Attorneys for SNG Communications, L.L.C.

Dated: November 17, 2004

STATE OF ILLINOIS)
) SS
COUNTY OF ROCK ISLAND)

VERIFICATION

Gerald J. Taylor, on oath, deposes and states that he is the general manager of SNG Communications, L.L.C.; that he is authorized to make this verification; that he has read SNG Communications, L.L.C.'s "Motion for Leave to File Motion to Dismiss, Verified Answer and Affirmative Defenses *Instanter* and Appearance", "Motion to Dismiss", and "Verified Answer and Affirmative Defenses", and is familiar with the contents thereof; and that the facts set forth in the foregoing pleadings are true and correct to the best of his/her knowledge and belief.

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Subscribed and sworn to before me
this 17th day of November, 2004.

Donna M. Herbig

Notary Public

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Bell Telephone Company)	
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1-800 Reconex, Inc., et al.,)	Docket 04-0606
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220 ILCS 5/10-108 and 83 Illinois)	
Administrative Code 200.170)	

NOTICE OF FILING

Please take note that on this day, November 17, 2004, we have filed with the Chief Clerk of the Illinois Commerce Commission the enclosed Appearance, Motion for Leave to File, Motion to Dismiss, and Verified Answer and Affirmative Defenses on behalf of SNG Communications, Inc.

By: Kathleen R. Pasulka-Brown
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CERTIFICATE OF SERVICE

I, Kathleen R. Pasulka-Brown, do hereby certify that on November 17, 2004, I caused electronic or hard copies of an Appearance for SNG Communications, L.L.C. and SNG Communications, L.L.C.'s:

Motion for Leave to File Motion to Dismiss, Verified Answer and Affirmative Defenses and Appearance *Instante*;

Motion to Dismiss; and

Verified Answer and Affirmative Defenses

to be served upon the individuals listed on the attached Service List.

Kathleen R. Pasulka-Brown
Kathleen R. Pasulka-Brown

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